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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

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Gaxiola, Rosa Gaxiola, Mauro German )  
Sanchez, Rafael Gil Soto, Alfonso Gomez, )  
Jose Gomez, Martin Gomez Alvarez, )

CIVIL ACTION NO. \_\_\_\_\_

**COMPLAINT FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF  
AND DAMAGES**

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	Contreras, Modeso Plasencia, Facundo	)
22	Quinonez, Aurelio Quinonez Armenta, Juan	)
	Ramirez Garcia, Antonio Ramirez Soto, Jose	)
23	Luis Ramos, Miguel Angel Rapan, Salvador	)
	Raygoza, Javier Rendon Aguilera, Graciela	)
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	Jesus Rodriguez Alvarez, Francisco	)
25	Rodriguez Cervantes, Rey Rodriguez Palma,	)
	Miguel Rodriguez Ramirez, Ramon	)
26	Rodriguez Rubio, Juan Rodriguez-Orozco,	)
	Florencio Rojo Pacheco, Luis Rojo Pacheco,	)
27	Florencio Rojo Torres, Jaime Ruano-Lomeli,	)
	Antonio Rubio, Francisco Saldana, Arturo	)
28	Salgado Bahena, Ruben Sanchez, Juan	)

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 Zamora Sanchez, Vicente Zamudio Trujillo,  
 Mario Zarate Godines, Gustavo Zerega  
 Espinoza,

Plaintiffs,

vs.

Servicios Agricolas Mex, Inc.,  
 Richard De Leon, Ralph De Leon, d/b/a  
 Servicios Agricolas Mexicanos, and  
 Marlin Ranching Company,

Defendants.

### PRELIMINARY STATEMENT

1. To protect the wages and working conditions of the domestic agricultural workforce, federal law requires employers to exercise a preference for U.S. farmworkers before turning to foreign farm labor. In 2006, in violation of these and other federal labor protections, Defendants displaced its entire U.S. citizen and legal permanent resident workforce with foreign nationals brought in as H-2A guest workers.

2. Plaintiffs, displaced U.S. farmworkers employed by Defendants in the 2005-2006 and previous citrus harvesting seasons, bring claims for violations of the Migrant and Seasonal Agricultural Worker Protection Act ("AWPA"), 29 U.S.C. §§ 1802 *et seq.*, including Defendants' breach of the parties' working arrangement and provision of false and

misleading information concerning the terms and conditions of employment.

3. Further, U.S. citizen Plaintiffs Harold Appling, Arturo Salgado Bahena, Miguel Angel Rapan, and Fernando Duarte Ochoa bring claims under 42 U.S.C. §1981 for discrimination in hiring based on alienage.

### **JURISDICTION**

4. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331, since the action arises under the laws of the United States; 28 U.S.C. § 1343(a)(4), covering claims arising under federal civil rights statutes; and 29 U.S.C. § 1854, covering claims arising under the AWP.

5. Venue is proper in this Court based on 28 U.S.C. § 1391(b) since a substantial part of the relevant events and omissions occurred in the district of Arizona.

### **PARTIES**

6. Plaintiffs Juan Abarca Figueroa, Federico Aguilar Murillo, Josefa Alvarez de Meza, Marcos Amezcua, Sergio Amezcua, Pedro Angulo, Harold Appling, Cesar Arce Insunza, Jose Arellano Juarez, Gumercindo Arroyo Camacho, Santiago Arzate Carrillo, Armando Arzate-Carrillo, Alfredo Avalos Barron, Raul Avila Almanza, Trinidad Ayon Jusaino, Jose Becerra, Ismael Becerra Perez, Baldemar Bedolla Bedolla, David Beltran Miranda, Juan Beltran Soto, Rafael Beltran-Nunez, Jacobo Bobadilla German, Jose Botello-Avila, Vicente Briceno Farias, Mario Bustos Cruz, Marco Antonio Cabrera-Garcia, Octavio Caldera, Manuel Castillo, Mario Castro Mora, Florentino Castro Ramirez, Adelaido Castro Ruiz, Jose Cazares Aguilar, Francisco Cervantes Gil, Amador Cervantes-Sandoval, Jesus Cervantes-Sandoval, Jose Chavez Gomez, Rosario Chinchillas, Jose Contreras Moroyoqui, Joaquin Cordova Martinez, Baldomero Corona Ruiz, Cipriano Crispin Mendez, Josefina Cuara Aguilar, Peregrino De La Rosa Toledo, Jorge Delgado Marias, Diego Delgado Torres, Alejandro Duarte, Fernando Duarte Ochoa, Francisco Duarte Rascon, Jesus Duran, Juan Escalante Carrillo, Guadalupe Espinoza Vargas, Heriberto Espinoza Vargas, Abraham Esquivel, Sergio Felix Prado, Rosario Flores Oliverria, Lucia Franco, Luciano Franco, Antonio Fuentez Zamudio, Raul Gamez Camacho, Guberto Garcia, Raul Garcia, Salvador

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 3 Maria Gonzalez, Saul Gonzalez de Leon, Mariano Gonzalez Espinoza, Reynaldo Guerra  
 4 Jimenez, Ruben Gutierrez-Valdez, Lorenzo Hernandez, Tomas Hernandez, Jesus Hernandez  
 5 Chavira, Mario Hernandez Hernandez, Sabas Hernandez Muniz, Humberto Hernandez Sabori,  
 6 Jesus Hernandez Vazquez, Ernesto Herrera Luna, Magdaleno Isais Casa, Francisco Ledesma,  
 7 Francisco Leon Torres, Fernando Linares Sanchez, Luis Llamas Leon, Martin Arturo Lopez,  
 8 Gamaniel Lopez Espinoza, Lino Lopez Figueroa, Casimiro Lopez Medina, Jose  
 9 Lopez-Villegas, Teodoro Loya Carrillo, Pedro Lubiano Cisneros, Ruben Luna Ramirez, Jesus  
 10 Luque, Rito Luque Luque, Juan Luque Martinez, Abelino Macias Nunez, Antonio Magana  
 11 Valdovinos, Sergio Magana Villicana, Isidro Martinez, Olegario Martinez Carrillo, Maria  
 12 Martinez Rosas, Florentino Medina, Trinidad Medina, Rey David Medina Bojorquez, Jesus  
 13 Medina Uriarte, Jesus Melendrez Prieto, Antonio Mendoza Madrid, Hilario Mesa Sedano,  
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 15 Miranda Haros, Crisonogo Miranda Lopez, Austroheberto Miranda Miranda, Luis Montanez,  
 16 Juan Morales Sanchez, Baltazar Moreno Jurado, Ramon Moreno-Gutierrez, Samuel Murillo  
 17 Madrigal, Jesus Navarrete Arambula, Demetrio Nerez Pina, Gonzala Nunez, Jose Nunez  
 18 Avila, Cornelio Nunez Gonzalez, Felix Nunez Rios, Gerardo Olivarez Hernandez, Ruben  
 19 Olvera Gonzalez, Marco Pacheco Valdez, Carlos Palacios, Enrique Paredes Ruiz, Emiliano  
 20 Parra, Martin Patino Juarez, Venancio Patino Ortega, Armando Pena Quinonez, Jesus  
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 22 Quinonez, Aurelio Quinonez Armenta, Juan Ramirez Garcia, Antonio Ramirez Soto, Jose Luis  
 23 Ramos, Miguel Angel Rapan, Salvador Raygoza, Javier Rendon Aguilera, Graciela Reyes  
 24 Medina, Modesto Reyes Zambrano, Jesus Rodriguez Alvarez, Francisco Rodriguez Cervantes,  
 25 Rey Rodriguez Palma, Miguel Rodriguez Ramirez, Ramon Rodriguez Rubio, Juan,  
 26 Rodriguez-Orozco, Florencio Rojo Pacheco, Luis Rojo Pacheco, Florencio Rojo Torres, Jaime  
 27 Ruano-Lomeli, Antonio Rubio, Francisco Saldana, Arturo Salgado Bahena, Ruben Sanchez,  
 28 Juan Sanchez Huerta, Miguel Sanchez Huerta, Jose Sanchez Salas, Salvador Sanchez Solis,

Maria Sandoval Bojorquez, Martin Santos, Rosario Santos, Uriel Santos, Jose Segura Sandoval, Jose Maria Sepulveda, Octavio Serrano, Gonzalo Tapia Haro, Salomon Tapia Haro, Pablo Tirado Duran, Francisco Toledo Garcia, Julian Torres Corona, Hermelinda Torres Herrera, Jorge Trejo Gonzalez, Jose Valdez Acosta, Luis Valdez Duran, Victor Valenzuela, Miguel Valenzuela Gurrola, Guadalupe Valle Luque, Pedro Colino Vaquero, Gabriel Vargas Avila, Jose Vazquez Huerta, Eleuterio Vega Gil, Enrique Velarde Acosta, Federico Velazquez, Jose Vibriezca Ceja, Juan Villa Parra, Martin Villanueva, Victor Villanueva, Jose Villegas Garcia, Leopoldo Zamora Aguilera, Manuel Zamora Sanchez, Vicente Zamudio Trujillo, Mario Zarate Godines, Gustavo Zerega Espinoza are United States legal permanent residents and farmworkers who have their permanent place of residence in and around Yuma County, Arizona.

7. Plaintiffs Harold Appling, Arturo Salgado Bahena, Miguel Angel Rapan, and Fernando Duarte Ochoa are United States citizens and farmworkers who have their permanent place of residence in and around Yuma County, Arizona.

8. Upon information and belief, Defendant Servicios Agricolas Mex. Inc. does business in Arizona and is registered in Arizona as a corporation.

9. Upon information and belief, Defendant Servicios Agricolas Mexicanos previously did business in Arizona during the 2005-2006 citrus season. Defendant Ralph De Leon was an owner of Defendant Servicios Agricolas Mexicanos. Defendant Richard De Leon is his son, is an owner and president of Defendant Servicios Agricolas Mex Inc., and was operations manager of Servicios Agricolas Mexicanos. Because Defendant Servicios Agricolas Mexicanos and Defendant Servicios Agricolas Mex Inc. are fundamentally joined and joint employers, they will be hereinafter "SAM."

10. Upon information and belief, Defendant Marlin Ranching Company (hereinafter "Marlin") does business in Arizona and is registered as a corporation in Arizona.

11. Defendants are being sued as employers of Plaintiffs at all times relevant to this case.

///

**STATEMENT OF FACTS**

12. During the 2005-2006 citrus season and for several seasons before, Defendants employed Plaintiffs to work in citrus harvests.

13. At all times relevant to this action, Plaintiffs were seasonal agricultural workers within the meaning of the AWP, at 29 U.S.C. § 1802(10), and/or individuals entitled to the AWP's protections.

14. At all times relevant to this action, Defendants were "agricultural employers" within the meaning of 29 U.S.C. § 1802(2).

15. Prior to the harvest seasons 2003-2004, 2004-2005 and 2005-2006, in August each year, Defendants recruited Plaintiffs to perform agricultural labor in and around San Luis, Arizona.

16. Plaintiffs expected to be rehired every season by Defendants.

17. During the harvest seasons 2003-2004, 2004-2005 and 2005-2006, it was Defendants' practice to either contact Plaintiffs by letter or telephone or recruit them in parking lots in San Luis, Arizona and inform them about the start date of the harvest season.

18. In 2006, rather than rehiring Plaintiffs, SAM sought permission to import foreign H-2A workers, premised on certifications that it could not find qualified U.S. workers for the citrus harvest. On June 29, 2006, the Department of Labor (DOL) approved SAM's application, attached as Exhibit 1 (hereinafter "SAM order").

19. The SAM order was also filed with the Arizona Department of Economic Security Office in Phoenix, Arizona.

20. The SAM order was an offer of employment to 150 workers to be employed as fruit harvest workers from August 15, 2006 through March 31, 2007.

21. The SAM order constituted an offer of employment to Plaintiffs and a "working arrangement" between Defendants and Plaintiffs.

22. The SAM order was utilized by Defendants as a written disclosure of the terms and conditions of employment.

23. The SAM order stated that Defendants would provide housing in Dateland,

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1 Arizona and promised \$8.00 per hour and 30 hours of work per week.

2 24. In the job order, SAM offered hours and wages inferior to those offered and  
3 paid to Plaintiffs in previous seasons, when SAM was not importing foreign farm labor.

4 25. Upon information and belief, the prevailing wages and working hours of citrus  
5 harvesters in the San Luis, Arizona area in 2006-2007 exceeded \$240.00 and 30 hours of  
6 work per week.

7 26. Upon information and belief, Defendants knew that the wages and working  
8 hours of citrus harvesters in San Luis, Arizona area in 2006-2007 exceeded \$240.00 per week  
9 and 30 hours of work per week.

10 27. Upon information and belief, Defendants intentionally set the promised wages  
11 and working hours below prevailing market conditions in an effort to make the jobs  
12 undesirable to U.S. workers.

13 28. Attached to the SAM order was a letter from Defendant Marlin, the citrus  
14 grower, stating that it intended to contract with "SAMEX" for lemon and orange harvesters  
15 from August 15, 2006 through March 31, 2007. Marlin's letter stated that it needed 150  
16 workers.

17 29. Also attached to the order was a document stating that Defendant Servicios  
18 Agrícolas Mex. Inc. carried workers compensation and employers liability insurance policy  
19 from August 1, 2005- August 1, 2006.

20 30. Also attached to the SAM order were assurances by Defendants that they would  
21 "positively recruit" U.S. workers.

22 31. Despite these assurances, before the 2006-2007 harvest season, none of the  
23 Plaintiffs was recruited by Defendants.

24 32. Before the 2006-2007 harvest season, none of the Plaintiffs received letters or  
25 telephone calls from Defendants informing them of the start date of the season.

26 33. Before the 2006-2007 harvest season, Defendants failed to recruit at the  
27 parking lots in San Luis, Arizona, the prevailing practice in the area and Defendants' past  
28 practice.

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34. Before the 2006-2007 harvest season and at the beginning of the season, several Plaintiffs asked agents of Defendants when the season would begin, and they were told that they were being replaced by "Mexican contract workers."

35. None of the Plaintiffs was hired by Defendants for the 2006-2007 lemon season.

36. Instead, Defendants filled all 150 harvesting positions with foreign H-2A workers.

37. All of the H-2A workers hired by Defendants were foreign nationals. None was a citizen or resident of the United States.

38. As a result of Defendants' failure to recruit and hire Plaintiffs, Plaintiffs suffered damages.

39. While previously employed by Defendants, Plaintiffs harvested crops that were produced for movement in interstate commerce, or for incorporation as ingredients in products anticipated to move in interstate commerce.

40. All of the actions and omissions alleged in this Complaint were undertaken by Defendants either directly or through their agents.

### **FIRST CAUSE OF ACTION**

#### **(Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. § 1801 *et seq.*)**

41. Plaintiffs allege and incorporate by reference paragraphs 1 to 40.

42. The SAM order constituted a "working arrangement" as defined under the AWPA, between Plaintiffs and Defendants.

43. The SAM order was utilized by Defendants to satisfy the written disclosures provision of the AWPA, 29 U.S.C. §§ 1821(a) and 1831(a).

44. Defendants knowingly provided false and misleading information to the DOL and Plaintiffs concerning the terms, conditions and existence of employment by Defendants in contravention of the AWPA, 29 U.S.C. §§ 1821(f) and 1831(e), by:

- a. informing many Plaintiffs that jobs were not available;
- b. failing to recruit Plaintiffs by telephone, mail or in parking lots as

practiced in previous seasons;

- c. including assurances set forth in the SAM order to positively recruit while intending to not comply with such assurances;
- d. falsifying the amount of hours per week of employment while knowing that the hours would be greater.

45. Defendants' failure to recruit and provide employment to Plaintiffs was without justification and violated the terms of Defendants' working arrangement with Plaintiffs, in contravention of the AWP, 29 U.S.C. §§ 1822 (c) and 1832 (c).

46. The violations of the AWP described herein were the result of the conscious and deliberate actions of Defendants and were intentional within the meaning of the AWP, 29 U.S.C. § 1854 (1982).

47. For each violation of the AWP, each Plaintiff so affected is entitled to receive the greater of his actual damages or up to \$500.00 per violation in statutory damages pursuant to 29 U.S.C. § 1854 (c).

## **SECOND CAUSE OF ACTION**

**(Discrimination Based Upon Alienage, 42 U.S.C. § 1981 *et seq* )**

**(On Behalf of Plaintiffs Harold Appling, Arturo Salgado Bahena, Miguel Angel Rapan, and Fernando Duarte Ochoa)**

48. Plaintiffs Harold Appling, Arturo Salgado Bahena, Miguel Angel Rapan, and Fernando Duarte Ochoa allege and incorporate by reference paragraphs 1 to 47.

49. Defendants intentionally discriminated against Plaintiffs Harold Appling, Arturo Salgado Bahena, Miguel Angel Rapan, and Fernando Duarte Ochoa in the making of an employment contract, by refusing to recruit or re-hire them as harvest workers based upon their alienage, in favor of non-resident, Mexican nationals.

50. Defendants intentionally and knowingly attempted to dissuade U.S. workers including Plaintiffs Harold Appling, Arturo Salgado Bahena, Miguel Angel Rapan and Fernando Duarte Ochoa from employment with Defendants by offering sub-market weekly wages and hours, in order to create a pretext for alienage discrimination.

51. As a result of Defendants' violation of 42 U.S.C. § 1981 *et. seq.*, Plaintiffs Harold Appling, Arturo Salgado Bahena, Miguel Angel Rapan, and Fernando Duarte Ochoa are entitled to declaratory and injunctive relief and actual damages.

**PRAYER FOR RELIEF**

Wherefore, Plaintiffs pray that this Court grant them the following relief:

- a. Declare that Defendants intentionally violated Plaintiffs' rights under the AWPAs;
- b. Award each Plaintiff the greater of his or her actual damages, or statutory damages of \$500 for each violation of the AWPAs in each season applicable;
- c. Enjoin Defendants from future violations of the AWPAs by failing to recruit and hire U.S. farmworkers;
- d. Declare that Defendants discriminated against Plaintiffs Harold Appling, Arturo Salgado Bahena, Miguel Angel Rapan, and Fernando Duarte Ochoa based upon their alienage pursuant to 42 U.S.C. §1981;
- e. Award Plaintiffs Harold Appling, Arturo Salgado Bahena, Miguel Angel Rapan, and Fernando Duarte Ochoa their actual damages for Defendants' violations of 42 U.S.C. § 1981;
- f. Enjoin Defendants from future hiring discrimination in violation of 42 U.S.C. § 1981, by favoring foreign nationals over U.S. citizens;
- g. Award Plaintiffs pre- and post judgment interest; their costs of suit; and for additional counsel (other than undersigned) who may appear, their reasonable attorney's fees; and
- h. Award Plaintiffs such other relief as this Court deems just and proper.

RESPECTFULLY SUBMITTED this 19<sup>th</sup> day of December, 2007.

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/s/Pamela M. Bridge  
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